

³ *Protecting and Promoting the Open Internet*, 30 FCC Rcd 5601, 5685 (¶ 191) (2015) (“2015 Open Internet Order”). See Comments of Gogo Inc., WC Docket No. 17-108, at 1 & 5-6 (filed July 31, 2017).

their respective establishments” as examples of premises to which provision of dedicated Wi-Fi connectivity falls outside the BIAS definition.⁴ These types of “operators” are considered exempt even “to the extent they may be offering [BIAS].”⁵ As the Commission does not discuss whether or not an amenity fee may be imposed, the exemption would evidently apply regardless of whether the premises operator charges a fee to the end-user. The Commission’s discussion of this exemption in the *2015 Open Internet Order* is very brief, however, creating several other ambiguities regarding the precise scope and intent of the term, and the Commission has not had occasion to provide additional guidance to clear up these uncertainties.

Global Eagle believes there are two key ambiguities in the term “premises operator,” as the Commission has previously outlined it. First, it is not clear whether the term “premises operator” is meant to apply just to a business owner offering Wi-Fi connectivity on an ancillary basis to customers, or if it is intended to apply more broadly to entities engaged to implement and actually “operate” service at such locations (*i.e.*, not just the business owner, but the vendors and other service providers—whether engaged directly by the owner or indirectly through the owner’s primary Wi-Fi vendor—in the chain necessary to provide connectivity to specific premises).⁶ The Commission has stated that connectivity offerings of this type “are typically offered *by the premise operator* as an ancillary benefit *to patrons*.”⁷ This language may imply that the “patrons” using the service are end-user customers of the “premises operator,” but even that is far from certain, and it begs the question why the Commission would develop the novel term “*premises operator*” if it meant to limit the scope only to the *business owner* that provides

⁴ *2015 Open Internet Order*, 30 FCC Rcd at 5685 (¶ 191), *citing 2010 Open Internet NPRM*, 25 FCC Rcd 17905, 17935 (¶ 52) (2010).

⁵ *Id.*

⁶ *See* Gogo Comments at 6.

⁷ *2015 Open Internet Order*, 30 FCC Rcd at 5685 (¶ 191) (emphasis added).

Wi-Fi to its own customers on an ancillary basis. One would have expected in that instance a clear statement that the exception applied to business owners providing Wi-Fi connectivity as an ancillary amenity to their patrons. For this reason, it seems likely that something broader was intended.

Second, the definition appears to presume that a “premises operator” will necessarily “acquire *broadband Internet access service* from a broadband provider.”⁸ Broadband Internet access service, however, unlike the term “premises operator,” is a codified, Commission-defined term meaning, in pertinent part, “a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints.”⁹ As Gogo points out,¹⁰ insofar as it has been previously articulated by the Commission, the premises operator terminology appears fundamentally grounded in the environment applicable to “wired or terrestrial wireless Internet service,” where acquiring service from “a mass-market” provider is taken as the norm,¹¹ but does not “fit the paradigm” of most connectivity service offered outside of the terrestrial setting, such as that offered to mobile aviation and maritime platforms.¹² Thus, some types of entities that would otherwise fall within the term “premises

⁸ *Id.*

⁹ 47 C.F.R. §8.2(a).

¹⁰ See Gogo Comments at 1 (The *2015 Open Internet Order* “created substantial ambiguity around how the rules should be applied to Internet service providers that do not fit the paradigm of wired or terrestrial wireless Internet service”).

¹¹ For purposes of the BIAS definition, “mass market” is defined as “a service marketed and sold on a standardized basis to residential customers, small businesses, and other end-user customers such as schools and libraries.” *2015 Open Internet Order*, 30 FCC Rcd at 5683 (¶ 189).

¹² Gogo Comments at 1. The specific applicability to “airlines” is also somewhat ambiguous in that each of the other premises listed is a distinct terrestrial location likely to obtain “broadband Internet access service from a broadband provider to enable patrons to access the Internet,” as stated in the *2015 Open Internet Order*, 30 FCC Rcd at 5685 (¶ 191). This phrase does not apply as comfortably to in-flight services, for example, which are beyond the reach of traditional broadband providers. The term “airlines” as used in 2010 might actually refer to Wi-Fi services

operator” may not fit at all the typical pattern of purchasing/providing BIAS, and may instead provide connectivity to short-term users by alternate means. This is the case with Global Eagle, which provides tailored connectivity services to companies operating aircraft, ships, offshore maritime platforms and in other unique settings that fall well outside the scope of the residential, small businesses, and other end-user customers that define provision of mass market BIAS. The services that Global Eagle provides to its enterprise customers pursuant to contracts between Global Eagle and that enterprise customer are in turn used by those customers’ end-user passengers and their employees.

Global Eagle believes that the premises operator exemption, as it has been articulated with respect to terrestrial fixed broadband, also logically encompasses Internet connectivity services offered to mobile aviation and maritime platforms because the services being provided are essentially identical in two substantive respects: (1) they are offered only on a transient basis to users during the limited time they are present at the “premises” served, and (2) the actual end-users of the connectivity capability (*e.g.*, the airline’s or cruise line’s passengers) generally have their initial customer relationship with the proprietor of the “premises” (*e.g.*, with the airline or cruise line), and not with Global Eagle.

Given the concern underpinning the current application of Title II regulation to BIAS providers, *i.e.*, the unique leverage that BIAS providers can have over regular subscribers to their services, the occasional-use internet connectivity services provided at both brick-and-mortar and mobile platform premises would seem equally outside the scope of concern underlying the 2015

provided in airport club lounges operated by airlines. *See, e.g., Continental Airlines*, 21 FCC Rcd 13201 (2006). These implementations are more analogous to the other types of locations enumerated in the exception. While, as discussed herein, *aircraft* are clearly equivalent to the other premises identified, nothing in the Commission’s discussion of the term “*airlines*” definitively indicates that it was referring to in-flight connectivity, or had even considered the novel issue of connectivity technology provided to airplanes or other vehicles in motion.

Open Internet Order. For example, in the since-superseded *Broadband Privacy Order*, the Commission explained that BIAS providers are considered the “‘on ramp’ to the Internet,” giving them “access to vast amounts of information about their customers including when we are online, where we are physically located when we are online, how long we stay online, what devices we use to access the Internet, what websites we visit, and what applications we use.”¹³ In contrast, the transitory Internet usage engaged in by airline, cruise ship and other commercial carrier passengers, for example, self-evidently provides the service operator with only a small fraction of this information, because the capability may be used only during a narrow window in which the user is both present on a flight or a cruise and chooses to make use of on-board internet connectivity – *e.g.*, when airline or cruise patrons use these services, they are necessarily on a plane or on a ship because the Global Eagle mobile connectivity technology is available only on these platforms on certain airlines and passenger ship lines that have entered into contracts with Global Eagle. Individual consumers cannot obtain service directly from Global Eagle without first having a carrier-passenger relationship with one of these transportation providers. This type of access neither establishes a continuing subscriber relationship nor allows a comprehensive picture of an individual’s Internet usage and preferences – *i.e.*, the personally-identifiable information about which regulators are most concerned (including such data as usage, devices connected and websites and applications accessed) – as each user’s connection using Global Eagle facilities is necessarily limited to use while in route, during a finite time period. Global Eagle and Gogo have no influence over or visibility into an individual’s Internet usage other than during the brief period when such an individual is present on an aircraft or ship on which they provide connectivity service.

¹³ *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, 31 FCC Rcd 13911, 12913 (¶ 2) (2016) (“*Broadband Privacy Order*”).

Moreover, the Commission has observed that “applying the open Internet rules to the provision of broadband service by premises operators would have a dampening effect on these entities’ ability and incentive to offer these services.”¹⁴ Such a rationale applies more strongly to a connectivity service provided to aircraft and ships where, as outlined by Gogo with respect to in-flight connectivity,¹⁵ the challenges of providing service and the resulting need for operational and regulatory flexibility are significantly more substantial than those relating to service provided in bookstores or coffee shops. Like aviation connectivity applications, maritime Wi-Fi offerings must adapt to unique conditions, accommodating potentially large numbers of users on massive vessels both while in motion at sea and while stationary in port (often subject to localized coordination requirements with terrestrial fixed facilities). In addition, both aviation and maritime services afford users unique benefits to end-user passengers as compared to terrestrial retail “hot spots,” where similar connectivity service may be readily available via other means (*e.g.*, terrestrial wireless mobile broadband or out-of-home Wi-Fi via fixed connections). In short, in-flight and on-board aviation and maritime connectivity offers passengers a service that is much-desired and, because of the environs served, can only be offered via specialized arrangements made between airlines/cruise lines and companies like Global Eagle and Gogo.

Accordingly, Global Eagle urges the Commission, in the event it retains some elements of the current BIAS regulations, to clarify the premises operator definition by establishing that it is an exemption that, consistent with its original formulation, applies whenever the following conditions are met: (1) Wi-Fi Internet connectivity is offered only to discrete out-of-home locations, (2) to transient users present at such locations, (3) who are guests or customers of the location proprietor, and (4) regardless of whether users pay a fee for such temporary use (and

¹⁴ *Open Internet Order*, 30 FCC Rcd at 3685 (¶ 191).

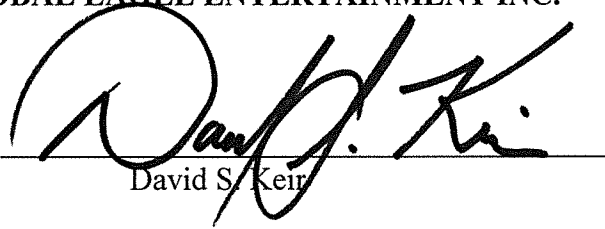
¹⁵ Gogo Comments at 2 and 4-5.

regardless of to whom a fee is paid). In establishing greater regulatory certainty concerning the term, the Commission should specifically exempt from any BIAS regulations that remain all Wi-Fi offerings to mobile platforms in both the aviation and maritime contexts where these criteria are met.

Respectfully submitted,

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By: _____

A handwritten signature in black ink, appearing to read "David S. Keir", written over a horizontal line.

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